Supreme Court of the United States

October Term, 1944

No. [redacted] 105

SHINYU NORO and SHOJE M. GOTO,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR
CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS, NINTH CIRCUIT

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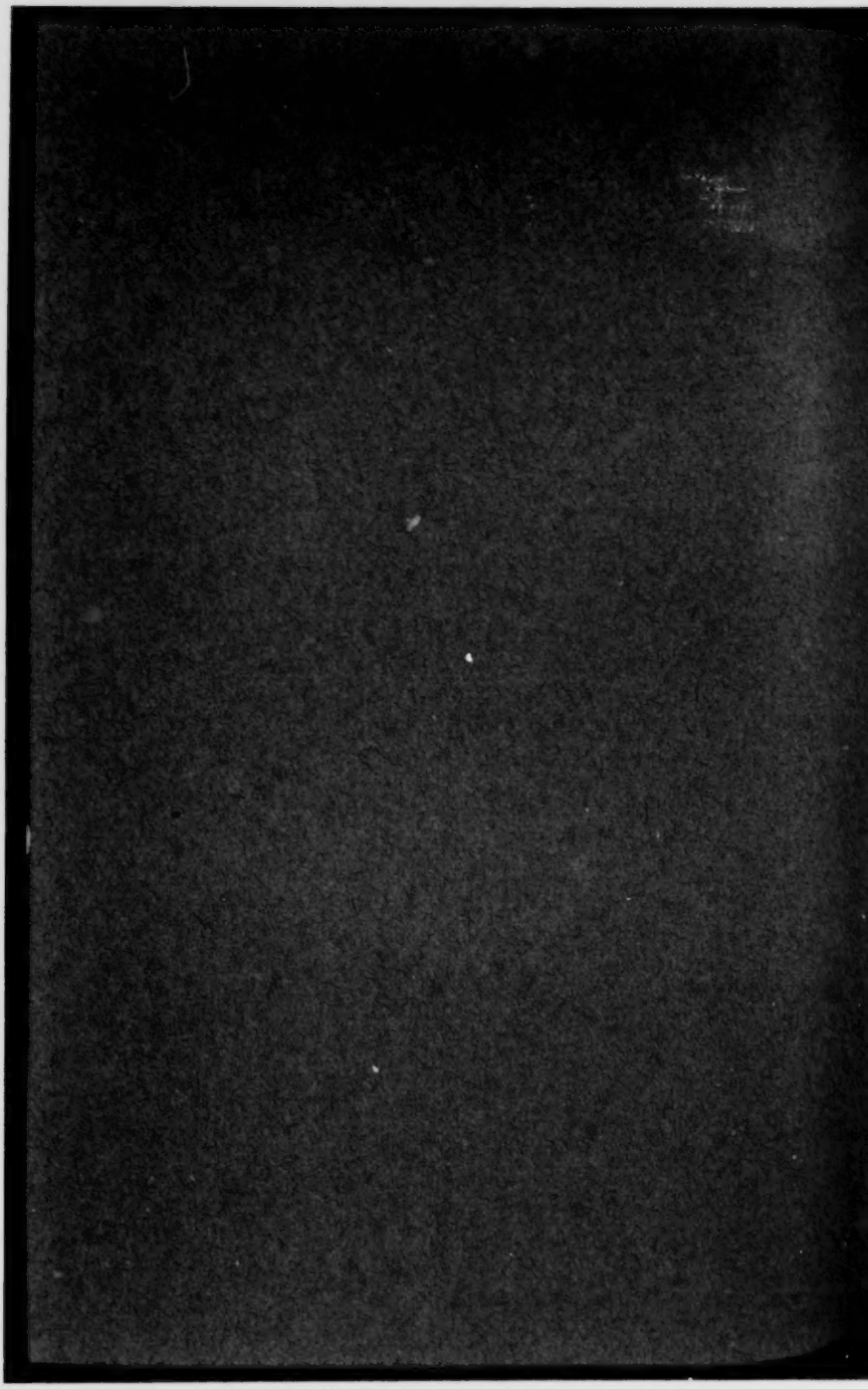
Attorneys for Petitioners



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OTHER AUTHORITIES CITED

IN THE

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SHINYU NORO and SHOIE M. GOTO,
PETITIONERS,
vs.
UNITED STATES OF AMERICA
RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

I.

THE OPINION

The petitioners herein, by a Petition for Writ of Certiorari, seek a review of a judgment and opinion of the United States Circuit Court of Appeals for the Fifth Circuit, which opinion and judgment is found in the record on pages 144 to 150. Copy of the Opinion is a part of the Appendix, marked Exhibit A, and attached to the petition herein. Said judgment and opinion is an affirmance of judgments and sentences imposed against petitioners by the United States District Court

for the Southern District of Florida, which judgments are set out in the record at pages 22 to 25, inclusive.

II.

STATEMENT OF GROUNDS UPON WHICH THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES IS INVOLVED

This statement is set out in the accompanying Petition under Part III, which is hereby adopted and made a part of this brief by reference.

III.

STATEMENT OF THE CASE

A concise statement of the case, containing all that is material to the consideration of the questions presented, is set out in the accompanying Petition under Part I, which is hereby adopted and made a part of this brief by reference.

IV.

SPECIFICATION OF ERRORS TO BE URGED

This specification is set out in the accompanying Petition under Part IV, which is hereby adopted and made a part of this brief by reference.

V.

ARGUMENT

Summary of Argument

Point 1. The search of Nikko Inn, and the seizure of the business records of said business, the property of petitioners, by government officials without au-

thority of a search warrant or other legal process and introduction in evidence of such records over the timely objections made by petitioners, was in violation of their rights secured under the Fourth and Fifth Amendments to the Constitution of the United States.

Point 2. The evidence is legally insufficient to support the verdict and judgment by reason of the absence of proof that petitioner Noro received during the tax years in question any income in excess of that which he reported and paid tax upon.

POINT 1.

The search of Nikko Inn, and the seizure of the business records of said business, the property of petitioners, by government officials without authority of a search warrant or other legal process, and introduction in evidence of such records, over the timely objections made by petitioners, was in violation of their rights secured under the Fourth and Fifth Amendments to the Constitution of the United States.

On December 8, 1941, United States Customs Agents converged upon petitioners' place of business, Nikko Inn, in St. Petersburg, Florida, and, although they did not have a search warrant for said business or a warrant for the arrest of any person therein, demanded and seized in the name of the United States the ledgers, books and records of the business. (R-47, 49, 52). On December 18, 1941, the books and records of Nikko Inn so obtained were delivered to an Internal Revenue Agent for audit. (R-69-81). Based upon the audit, petitioners were prosecuted for the alleged peace-time offense of attempting to defeat by false income tax returns a portion of tax due by Noro for the years 1936 to 1940 inclusive.

The government's case is bottomed squarely upon the audit of the books of Nikko Inn obtained in the manner and by the method above stated. During the progress of the trial in the court below the Government offered in evidence the books, ledgers, sales slips, etc., of Nikko Inn, to which offer the petitioners objected upon the grounds that the search of Nikko Inn and the seizure of the records of that place of business under the circumstances stated, and the introduction in evidence of such records and testimony predicated thereupon, was in contravention of petitioners' rights secured to them by the Fourth and Fifth Amendments to the Constitution of the United States. Petitioners' objections were over-ruled and the said books and records received in evidence. (R-55). The validity of the judgment entered against these petitioners must, therefore, depend upon whether the actions and activities of the seizing officers were in trespass upon petitioners' rights and privileges under the provisions of the Fourth and Fifth Amendments.

The Fourth Amendment to the Constitution of the United States provides

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated * * * "

and the Fifth Amendment further guarantees to all within the jurisdiction of the United States of America that

> "No person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law."

The decisions of this Honorable Court in interpreting the provisions of the Fourth and Fifth Amendments have jealously guarded and sustained the rights so secured thereunder against every encroachment that was out of harmony with the spirit and the purpose of such Amendments.

One of the outstanding cases in which this Honorable Court discussed the provisions of the Fourth Amendment with reference to unlawful search and seizure, and the Fifth Amendment with reference to compelling one to give testimony against one's self in a criminal case is the case of *Boyd* vs. *U. S.*, 116 U. S. 616, 6 Sup. Ct. 524, 29 L. Ed. 746. The Court held that it does not require actual entry upon premises and search for and seizure of papers to constitute an unreasonable search and seizure within the meaning of the Fourth Amendment. A compulsory production of a party's private books and papers to be used against himself or his property in a criminal or penal proceeding, or for a forfeiture, is within the spirit and meaning of the Amendment. The seizure or compulsory production of a man's private papers to be used in evidence against him is equivalent to compelling him to be a witness against himself, and such pattern of conduct is equally within the prohibition of the Fifth Amendment. Both Amendments relate to the personal security of the citizen. They nearly run into and mutually throw light upon each other. When the thing forbidden in the Fifth Amendment, namely, compelling a man to be a witness against himself, is the object of a search and seizure of his private papers, it is an "unreasonable search and seizure" within the Fourth Amendment.

In *Adams* vs. *New York*, 192 U. S. 585, 48 L. Ed. 575, it was held:

> "The security intended to be guaranteed by the 4th Amendment against wrongful search and seizures is designed to prevent violations of private security in person and property and unlawful invasion of the sanctity of the home of the citizen by officers of the law, acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted."

In *Weeks* vs. *U. S.*, 232 U. S. 382, 34 Sup. Ct. 341, 58 L. Ed. 652, this Honorable Court considered further the provisions and purpose of the Fourth Amendment and a unanimous Court, speaking through Mr. Justice Day, held:

> "The effect of the Fourth Amendment is to put the courts of the United States and *federal officials,* in the exercise of their power and authority, under *limitations* and *restraints* as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers and effects against all unreasonable searches and seizures under the *guise* of law. This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all intrusted under our federal system with the enforcement of the laws." (Emphasis ours).

In the case of *Silverthorn Lumber Company* vs. *United States,* 251 U. S. 385, 64 L. Ed. 319, 40 Sup. Ct. 182, the Court held that the knowledge gained by the Federal Government's wrongful act in seizing papers in violation of the owner's constitutional protection against unlawful searches and seizures cannot thereafter be used by the government in a criminal prosecution by serving subpoenas upon such owners to produce

such papers which the government had returned to the owners after copies had been made, and by obtaining a Court Order demanding compliance with such subpoenas. In the Silverthorn case the government officers searched the corporation's premises and seized certain books and papers and documents and such officers were not armed with a search warrant or other process which purported to authorize any such search or seizure. The Court further held:

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that *it shall not be used at all.*" (Emphasis ours).

In the case of *Gouled* vs. *United States,* 255 U. S. 298, 65 L. Ed. 647, 41 Sup. Ct. 261, a search of the defendant's office was made by the Government's Agent on the pretense of making a friendly call upon him and having gained admission in this manner proceeded, in the absence of defendant and without any process or warrant, to seize and carry away such papers.

In holding that this search and seizure was unlawful, the Court held:

> "Whether entrance to the home or office of a person suspected of crime be obtained by a representative of any branch or subdivision of the government of the United States by stealth or through social acquaintance or in the guise of a business call, and whether the owner be present or not when he enters, any search and seizure subsequently and secretly made in his absence falls within the scope of the prohibition of the 4th Amendment, * * * ".

In this case, the Court further pointed out that "searches and seizures are as constitutional under the Amendment when made under valid search warrants *as they*

are unconstitutional, because unreasonable, when made without them, * * *".*

In the case of *Amos* vs. *United States,* 255 U. S. 313, 65 L. Ed. 654, 41 Sup. Ct. 266, the search was made of the defendant's home by government agents who were not armed with a search warrant. The Court held that the property seized was seized in plain violation of the Fourth and Fifth Amendments of the United States Constitution and that the Court should have excluded such property and any testimony relating thereto given by the government agents who made the unlawful search and seizure, on the motion of the accused which was made after both property and testimony had been introduced in evidence against him. (See also *Agnello* v. *U. S.,* 269 U. S. 20, 46 Sup. Ct. 4, 70 L. Ed. 145).

The fundamental principles of law which have been discussed in the cases we have cited here have not passed into oblivion or disuse. They are still the law of this nation and by the terms of these two amendments the rights of *every person* within the jurisdiction of the United States to be free from unreasonable search and unreasonable seizure of property, and not required to give evidence against himself in a criminal prosecution, are to be measured and determined.

It has been at an early date in our jurisprudence settled that aliens, even enemy aliens, resident in this country also have some constitutional rights, among which are those rights enumerated in the Fourth, Fifth and Sixth Amendments to our constitution. It is fundamental that the Fourth, Fifth and Sixth Amendments are not limited in their application or scope to those who enjoy the blessings of citizenship in this country. The provisions of these amendments apply generally to *all persons* over whom the United States of America has

jurisdiction without regard to the race, creed, color or nationality of such individuals. (See *Yick Wo* vs. *Hopkins,* 118 U. S. 356, 6 Sup. Ct. 1064, 30 L. Ed. 220; *Wong Wing* vs. *U. S.,* 163 U. S. 228, 16 Sup. Ct. 977, 41 L. Ed. 140).

The Circuit Court of Appeals heard in this case argument of the government to the effect that in time of war an alien enemy is not within the scope of the protection and security of the constitutional provisions here invoked. In repudiating the thought so advanced, the Court held:

> "It may be true that they may by executive power be summarily arrested and interned and their property sequestered. Nevertheless we think that in a civil court trying an alien enemy for a crime committed in peace time, the constitutional safeguards of the accused ought to be maintained."

It is evident from the record, and the Circuit Court of Appeals in its opinion so found, that the officers who made the search of Nikko Inn and seized the records had ample time within which to obtain a search warrant for such establishment. However, the Circuit Court of Appeals proceeded to the determination that the search of Nikko Inn and the seizure of the records was not unreasonable because of the sudden emergency that faced this nation on December 7th and 8th, 1941, and the urgent orders of the President and the Secretary of the Treasury, and the Court sustained the search and seizure upon the authority of Sections 2 and 5B of the Trading with the Enemy Act, as amended May 7, 1940, 40 Stat. 411, and the Proclamations of the President issued pursuant thereto authorizing the Secretary of the Treasury to proceed with the licensing of the businesses of certain nationals; the Orders of the Secretary of the Treasury on December 7, 1941, revoking all licenses is-

sued for the benefit of Japan or any national thereof, and directing Customs officers to take possession of all Japanese businesses which had been licensed and to prevent the alteration or removal of books of such places of business; Presidential Proclamation No. 2525, 6 Fed. Reg. 6321, whereby any alien enemy was prohibited from having in his possession, custody or control, any firearms, bombs, ammunition, codes and ciphers, cameras, and like property, and also "papers, documents or books in which there may be invisible writing"; and directing that all *such* property possessed by an alien enemy be seized and forfeited.

The Trading with the Enemy Act to which the Court refers in its opinion, and the directions issued by the President to the Secretary of the Treasury pursuant to such Act, did not embrace the authority to search for the personal records of a resident alien enemy engaged in the conduct of a lawful business within this country. The Presidential Proclamation No. 2525 obviously did not purport to authorize the seizure of books of account and sales slips of resident alien enemies operating places of business in this country. The seizures and confiscations called for under the said Proclamation were carefully limited by the President's specific enumerations. Had the President of the United States considered it to be necessary for the welfare and public security of this nation that business records, ledgers, sales slips and similar items of record kept by places of business operated on December 7, 1941 by resident Japanese aliens be seized, he would certainly have made that determination in his Proclamation and directed the federal officials to carry into effect that finding. The customs agents were not free to take the President's Proclamation and extend its effectiveness by searching for and seizing items not embraced within the scope of

such Proclamation. This Proclamation, as is a criminal statute, is subject to a strict construction. 67 C. J. "War", Sec. 57, page 367. Furthermore, said Proclamation conferred investigatorial powers only upon the Attorney General, none of whose agents were involved in the instant search.

However, it was insisted by the government in their brief and argument before the Circuit Court of Appeals that the search and seizure here complained of were lawful because, among other reasons, the Congress provided expressly for such seizures on December 18, 1941, by the provisions of the First War Powers Act, 58 Stat. 839, and thereby ratified and confirmed all actions and orders theretofore taken or issued under the former law pursuant to the direction of the President or the Secretary of the Treasury.

We call attention to the fact that the First War Powers Act referred to was passed *ten days subsequent* to the search and seizure here complained of. If a search and seizure of one's papers and property on December 8, 1941, was void because such search and seizure was without authority of law and in contravention of personal rights secured under the Fourth and Fifth Amendments to the Constitution of the United States, then it must follow that the Act of the Congress passed ten days subsequent to the search and seizure could not place the garments of legality upon the seizure or the fruits thereof.

The very fact that the Congress on December 18, 1941 expressly provided for such seizures in the provisions of the said First War Powers Act and attempted by Sec. 302 thereof to ratify and confirm all actions and orders that had been carried out pursuant to the direction of the President or the Secretary of the Treasury

under the former law, is a congressional recognition that prior to December 18, 1941, there existed no authority for the making of the type of seizure complained of here. Congressman Hancock, in discussing the provisions of said Sec. 302, said: (87 Congressional Record, part 9, page 9862)

> "Section 302 is a very common sort of clause, a sort of saving clause, that is put into many bills of this kind. I assume the real purpose of it is to *legalize* certain seizures, contracts or censorships *that have been made in anticipation of this Bill.*" (emphasis ours).

In the case of Ex Parte Kumezo Kawato, 317 U. S. 69, 63 Sup. Ct. 115, this Honorable Court considered the question of whether the petitioner, a Japanese alien resident in this country, was precluded from prosecuting a suit in the Courts of this country, which suit he had filed April 5, 1941. A motion was filed to abate the action on the ground that petitioner, because of the state of war then existing between Japan and the United States, had become an enemy alien and had no right to prosecute any action in any Court of the United States during the pendency of the war. The District Judge granted the motion. Petitioner sought mandamus in the Circuit Court of Appeals for the 9th Circuit to compel the District Court to vacate its Order and to proceed to trial of his suit. This being denied, this Honorable Court granted leave to file a petition for mandamus in this Court. The Court, speaking through Mr. Justice Black, held:

> "'Alien enemy' as applied to petitioner is at present but the legal definition of his status because he was born in Japan with which we are at war. Nothing in this record indicates, and we cannot assume, that he came to America for any purpose different from that which prompted millions of others to seek our shores — a chance to

make his home and work in a free country, governed by just laws, *which promise equal protection to all who abide by them.*" (emphasis ours).

and further held:

"It is argued that the petitioner is barred from the courts by the Trading with the Enemy Act, 50 U.S.C.A. Appendix § 1 et seq. The particular clause relied on is Sec. 7: 'Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in Section 10 hereof (which relates to patents). * * * '. Analysis of its terms makes clear that this section was not meant to apply to petitioner, and an examination of its legislative history makes this doubly certain. Section 7 bars from the courts only an 'enemy or ally of enemy'. Section 2 of the Act defines the 'alien enemy' to which the Act applies as those residing within the territory owned or occupied by the enemy; the enemy government or its officers, or citizens of an enemy nation, wherever residing, as the President by proclamation may include within the definition. *Since the President has not under this Act made any declaration as to enemy aliens, the Act does not bar petitioner from maintaining his suit.*

"This interpretation, compelled by the words of the Act, is wholly in accord with its general scope, for the Trading With the Enemy Act was never intended, without Presidential proclamation, to affect resident aliens at all." (emphasis ours).

It would therefore appear from this opinion that, as late as January 20, 1942, no Presidential proclamation had been issued under the Trading With the Enemy Act referred to in the opinion of the Circuit Court of Appeals, that would make the provisions of said Act applicable to a resident alien enemy.

So it is that the search of petitioners' place of business and the seizure of their property on December 8, 1941, by customs officers who had ample time to obtain a search warrant had they cared to do so, and if they had legal grounds therefor, was in violation of petitioners' rights secured inviolate to them under the provisions of the Fourth Amendment.

The Circuit Court of Appeals in its opinion advanced the peculiar thought that the use of the evidence obtained by the search and seizure in the prosecution of petitioners did not violate the provisions of the 5th Amendment providing that no person shall be required in a criminal case to be a witness against himself, for the reason that neither of the accused testified during the trial and neither of them were required to produce and bring to court any books and papers. We submit that the matter may not be dismissed so lightly. It has long been the established law in this nation that the provisions of the Fifth Amendment protects every person within the jurisdiction of the United States against his being incriminated by the use of evidence which was obtained through a search or a seizure made in violation of his rights under the Fourth Amendment. *Boyd* vs. *U. S.*, Supra; *Agnello* vs. *U. S.*, Supra.

POINT 2.

The evidence is legally insufficient to support the verdict and judgment by reason of the absence of proof that petitioner Noro received during the tax years in question any income in excess of that which he reported and paid tax upon.

Petitioners frankly concede that ordinarily this Court will not issue the Writ of Certiorari to review sufficiency of evidence to convict, when such evidence

has been reviewed and found sufficient by the Circuit Court of Appeals. However, such general rule is subject to the exception, admittedly in rare instances, that where the record discloses an absolute lack of any evidence at all upon a material point essential to be proved, the Writ can and shall issue to consider the question. Petitioners submit this is such a case as falls within the exception.

The vital point of proof at the trial in the instant case was how much income was earned by Noro during the years 1936 to 1940 inclusive. Noro's failure to make due return of his annual earnings for those years is the gist of the indictment.

The books of account of the business, considering both the English and the Japanese books, did not show what Noro's personal income or distributive share of the earnings of the business was. Nor did the books show what the earnings or distributive share of any of the other partners or owners were. In fact, the books did not even purport to show who the owners or partners were, if in fact it was a partnership. All that the books of account showed, construing them most favorably to the government, was what the net income of *the business of the Nikko Inn* was during those years, broken down into weeks and months. To arrive at the net income, the books showed what the gross receipts were, broken down into days, weeks, months and years, and likewise as to the gross expenditures. From these figures the books went on to itemize the net income. But the point is — *these final figures showed only what the business as a whole produced in net income. When this was arrived at, the books from then on were silent.*

It was blandly argued by government counsel at the oral argument before the Circuit Court of Appeals that

both the English and Japanese books of account showed what the net earnings of each partner was during the years in question. Counsel for petitioners vigorously denied such fact and respectfully referred the Court to the books themselves which were originally certified to the appellate Court and which are likewise in turn certified originally to this Court to be perused and examined themselves. The books simply do not go beyond the point of showing what the net income of the business as a whole was. How the net income of the business was divided, among whom it was divided, to whom it was paid — all of that is entirely and completely undisclosed by the books.

It must be borne in mind that the prosecution here is grounded solely upon the subject matter of Noro's personal income tax return. No other tax return is involved. Thus, it is academic that in order to successfully prove that Noro incorrectly reported the true amount of his earnings for those years, there must be proof of what earnings he received from the Nikko Inn or what his distributive share consisted of, it being conceded by the government that the earnings which he derived and reported incorrectly were from the business of the Nikko Inn.

Now, if it be established that the books of account failed to supply proof of Noro's personal earnings or income (which fact will be established upon this Court's personal examination of the books), the evidence must be examined further to ascertain if such proof was supplied elsewhere.

Both at the trial and before the Circuit Court of Appeals the government pointed only to five additional pieces of evidence to supply the void. Such five items are concededly the extent of the government's proof and the sufficiency of the evidence to convict must rest

upon these items. These five items of evidence, each in the form of a written document (except Item 5) and originally certified to this Court for personal examination, are as follows:

(1) Assignment of a lease to "S. Nora, Mrs. M. Suzuki and Mrs. K. Toyama". The lease assignment was acknowledged May 28, 1929, and the lease referred to in the assignment covers the real estate upon which Nikko Inn is situated;

(2) A Bill of Sale to the personal property situate within Nikko Inn. The Bill of Sale was of date May 28, 1929, and conveyed the said personal property to the same parties designated in the lease assignment. It was set forth in the Bill of Sale that Shinyu Noro was to have fifty percent of the property, Mrs. Suzuki one-fourth or twenty-five percent of same, and Mrs. Toyama one-fourth or twenty-five percent of same;

(3) Noro's income tax return for the year 1936 with reference to the first line where there is printed the following: "salaries, wages, commissions, fees, etc., from Schedule 'A'." there is written "one-half partnership";

(4) Noro's income tax return for the year 1939 where there appears written after the words "salaries, wages, commissions, fees, etc., from Schedule 'A', the words "1/3 Nikko Inn"; and

(5) Testimony by Customs Agent Watson (R-45) that when the Federal officers raided the Nikko Inn on December 8, 1941, Noro stated to him, in answer to a question from the officers, "that he, Noro, owned one-half, and Goto one-fourth, and Mrs. Taniguchi one-fourth; that that had been the arrangement since the spring of 1941."

Based upon the above and no more, the government dashed merrily on to the conclusion that the petitioner Noro's distributive share was one-half of the net profit from the restaurant Nikko Inn for the years 1936 to 1940, each inclusive.

We take it to be a settled principal of law, founded in the bedrock of common sense, that when the government prosecutes one upon the charge of wilfully attempting to evade income taxes, the burden is with the government to establish by competent evidence beyond and to the exclusion of any reasonable doubt that an income tax was due from the defendant for the years laid in the indictment, over and above the amount of income tax paid, because the defendant could not be guilty of attempting to evade his income tax unless there was some additional tax due. In other words, the burden is with the government to prove by competent evidence that during the years in question a defendant had and received a taxable income in excess of that reported and paid on by him. *Gleckman* vs. *U .S.,* 80 Fed. (2d) 394).

Let us examine the five items of evidence specified above:

(1) This assignment (assuming that "S. Nora" is the same person as petitioner Shinyu Noro) merely discloses that Noro and two others had assigned to them a lease covering the real estate upon which the Nikko Inn was located. This had nothing to do with the net earnings of the business nor of the net earnings of any individual operator. The date of the assignment was May 28, 1929, eight years before the first return was filed by Noro which is involved in this indictment. Whether the lease had expired, whether it had been terminated, whether it had been canecIled, whether it had been defaulted in, whether it had been re-assigned—the answer to all these questions is wholly undisclosed by the record.

(2) This item of evidence is a Bill of Sale to the personal property located in Nikko Inn. The instru-

ment was dated May 28, 1929, and conveyed said personal equipment to Shinyu Noro and two other named parties in divisions of one-half, one-fourth and one-fourth respectively. This was likewise eight years before the first return of Noro involved in this case was filed. What happened or might have happened between May 1929 and January 1, 1936, the beginning of the first taxable year involved in the case, does not appear. The same contingencies pointed out above as to the preceding item apply equally here.

Furthermore, disregarding the time element and the wholly speculative element of possible contingencies, the Bill of Sale to the fixtures and equipment would have no necessary relation to the earnings or the distributive share of the income of the individual owners whatever. This fact is within anyone's personal, every-day knowledge. Ownership of the fixtures or the interest of ownership of the fixtures might bear no relation whatever to the individual earnings of the operators — and it quite frequently does not. But we do not have to rest upon public notoriety of such fact. It is a part of the government's own case here. Mr. Rohrer, government internal revenue agent, testifying in behalf of the Government, stated as follows:

> "It is a fact that a partnership may be composed of three persons, one-third each, and *yet the division among the partners of the total partnership income does not necessarily follow their interest in the capital stock of the partnership, very often it does not.* So that *if there were a division of interest, of ownership interest,* in the capital of the business of the Nikko Inn during those years, between two or three or four partners at different times, *that would not necessarily mean that the same ratio or interest would govern the division of profits.*" (R-92) (Emphasis ours).

(3) This item of evidence is Noro's income tax return for the year 1936 wherein, on the first printed line thereof appears the following: "Salaries, wages, commissions, fees, etc., from Schedule 'A' " and following in handwriting "one-half partnership". Aside from the fact that it is only for one year, it does not even prove, nor does it necessarily follow, that the handwritten language aforesaid means that the figure written opposite constituted a one-half distributive share of the net earnings of the Nikko Inn. "One-half partnership" does not necessarily mean anything by itself. As pointed out by the government witnesses themselves, it may mean one-half of the capital of the business or one-half of the distributive share of the income. In fact, it may mean other things, depending upon the existing agreement and the circumstances of the parties. The above quotation from Mr. Rohrer's testimony is fairly illustrative, and his testimony so given was with reference to this particular item as well as the preceding item. The testimony of Mr. Aldrich W. Boss, head of the income tax division of the Internal Revenue Repartment for Florida, is pertinent upon this point:

> "I can say that a partner in a business is not required necessarily to report as profit all of the cash that he gets out of a business. He has to report his distributive share of the partnership. He does not necessarily have to report as income all of the cash that he gets out of the partnership, even after the partnership bills are paid. It may be a withdrawal of capital. Also there might be withdrawals from the partnership profits or from invested capital or from the capital accounts of the partnership. Also some of it might be reinvested in the business, possibly. *Therefore, if the books reflect only the cash coming in and the cash going out, it would not necessarily reflect the amount of profit that he would base his income tax on, not necessarily.*" (R-109) (Emphasis ours).

(4) This item of evidence is Noro's income tax return for the year 1939 wherein, after the printed words "Salaries, wages, commissions, fees, etc., from Schedule 'A'," appear the words in handwriting "1/3 Nikko Inn". This item likewise concerns only one year. But apart from that, it proves nothing at all even as to that year. The same reasoning used above with reference to Items (2) and (3) apply with equal force here. But in addition thereto, if it be assumed that "1/3 Nikko Inn" means that he derived a one-third distributive share of the earnings of Nikko Inn, such conclusion would be directly inconsistent with the government's theory of the case, which was that Noro received one-half of the earnings rather than one-third. This last observation is perhaps important only, however, as illustrating the paucity of the probative value of the evidence.

(5) This item of evidence is a statement by Noro at the time the officers raided the Nikko Inn to the effect that Noro owned one-half and Goto one-fourth and Mrs. Taniguchi one-fourth of the business and that such arrangement had existed since the spring of 1941. On its face such evidence is worthless as proving what Noro's income from the business was from 1936 to 1940. On its face the division of interest in the business had existed only since the spring of 1941 which was a time subsequent to the last of the years involved in the indictment, which was 1940. Furthermore, the inclusion in the statement that this had been "the arrangement since the spring of 1941" implied rather conclusively that the arrangement prior to the spring of 1941 had been something different. This fact will again go in the face of the government's theory of the case, which was that during the years 1936 to 1940 inclusive Noro had owned one-half of the business and had received one-half of the net income. So, apart from the time

element involved, the evidence rather defeats the government's case instead of strengthening it. Certainly it is no sustaining evidence of the allegations of the indictment as to Noro's earnings during the years in question.

The petitioners earnestly contend that the government has not by competent evidence established that the petitioner Noro received any income from any source during the years in question in excess of that income which he reported and upon which he paid his tax. It may be that the government will plead that the rules of evidence in this case should be relaxed because of the difficulty that would have attended its efforts to establish with certainty that Noro in fact did receive a higher and unreported income during the years in question. However, it is well established that difficulty of proof is no substitute for actuality of proof. *U. S.* vs. *Buchalter,* 88 Fed. (2d) 625.

The proof in this case consisted entirely of circumstantial evidence and therefore the rule as to sufficiency of circumstantial evidence to convict must apply. The government perhaps will contend that the inferences arising from the chain of circumstances that it sought to prove are sufficient to establish the charge laid in the indictment. That may not be however. The rule is well established that inferences arising from circumstances cannot be substituted for circumstances to prove guilt. *Gerson* vs. *U. S.,* 25 Fed. (2d) 49. Circumstances that merely arouse the suspicion of guilt are not legally sufficient to sustain a conviction. *Turinetti* vs. *U. S.,* 2 Fed (2d) 15. In order to justify a conviction of a crime upon circumstantial evidence it is necessary that the directly proven circumstances be such as to exclude every reasonable hypothesis except that of the guilt

of the defendant. *U. S.* v. *Russo,* 123 Fed. (2d) 420. And where circumstantial evidence is relied upon to prove a fact, the circumstances must be proved and not themselves presumed. *Manning* vs. *John Hancock Mutual Life Insurance Company,* 100 U. S. 693.

No presumptions are to be indulged in in behalf of the government and against these petitioners, even if they are Japanese. When these petitioners were indicted by a grand jury and were brought by the government to the bar of the District Court of the Southern District of Florida for trial, they came to trial clothed in the presumption that they stood before the bar of the court innocent of the government's charge. These petitioners did not come into court as plaintiffs, but they were brought into court by indictment and due process of law to stand trial as defendants. A shorter yardstick may not therefore be used to determine the legal sufficiency of the evidence required of the government to sustain the material allegations in the indictment than in any other criminal case.

There are other major deficiencies of proof in the case, such as the fact that, from all the exhibits certified to this Court, the respective handwritings of Noro, Goto and Taniguchi (the third co-defendant who returned to Japan in May 1941) are shown. From this it is established that the handwriting in the books of account from 1936 to 1940, the years in question, was that of Taniguchi. In other words, Taniguchi kept the books during those years. Neither Noro nor Goto made any of such entries. For all that appears in the case, it is just as consistent that Taniguchi kept two sets of books showing different income of the business for the purpose of defrauding the other members of the business as it is that Noro and Goto were in a conspiracy

with him. There is no evidence that Noro had any knowledge of the existence of two sets of books or the notations made therein during the years they were kept. For all that appears in the record, Taniguchi may have kept the Japanese book at his home or elsewhere away from the business and away from the knowledge or scrutiny of his associates. It may have been discovered by his associates after he had fled the jurisdiction of the United States in May, 1941.

But petitioners frankly rest most heavily as to insufficiency of the evidence upon the proposition first discussed, namely, that neither in the books of record nor any of the documents introduced in the case, nor in any of the testimony of the witnesses, is there any proof sufficient to meet the test of circumstantial evidence as to what distributive share of the business Noro received during the years 1936 to 1940. This is the crux of the case. The point here argued is fundamental.

It is not a question of resolving the evidence into that which is logical and that which is illogical. It is not a question of balancing the scales between conflicting pieces of evidence and discarding that which has been refuted for the purpose of determining the sufficiency of the evidence as a whole. *Goldman* vs. *U. S.*, 245 U. S. 474; *Kramer* vs. *U. S.*, 245 U. S. 478; *Stilson* vs. *U. S.*, 250 U. S. 583; *Glasser* vs. *U. S.*, 315 U. S. 60. There is here presented a case where the most important, fundamental, and primary fact necessary to be established by the government in making out its case was wholly and completely unproven. *Abrams* vs. *U. S.*, 250 U. S. 616; *U. S.* vs. *Socony-Vacuum Oil Co.*, 310 U. S. 150; *Mortensen* vs. *U. S.*, 322 U. S. 369.

The opinion of the Circuit Court of Appeals upon the matter of proof seems to beg the question rather

than to demonstrate the sufficiency of proof. The Court of Appeals pointed out there were two books, that the English book said one thing and the Japanese book said another thing. The Court then continued: "No explanation is offered." (R-148-149). But the books only show what the net income of the business was during those years. The fatal vice of the case still obtains. Even assuming the Japanese books to speak the truth, still Noro's personal earnings were not disclosed. And incidentally, there is no showing anywhere in the case that, admitting a discrepancy in the books, the Japanese books speak the truth any more than the English books. In the absence of a breakdown of the earnings of the business to that of the individual partners, it could be as consistently concluded that the English books reflected the true status of the business as that the Japanese books did, nothing to the contrary appearing.

The Circuit Court of Appeals went on in its opinion to observe that the jury might well conclude that only the Japanese could read the Japanese books, that they had them for their own use, and that such books were true. (R-149) How the jury could legally arrive at such a conclusion from the evidence in the case is not made clear. There is no magic about the Japanese language that conclusively imports verity to documents written in that language. Merely because Japanese books were kept does not *ipso facto* make the contents of such books conclusively true. So we have two premises already assumed by the Circuit Court of Appeals which are false, first, that the books showed the income of Noro as an individual, and second, that the disclosures in the Japanese books were true. From these premises, the Circuit Court of Appeals proceeds to the finding that the English books must be the false ones and were therefore used "to support false income tax returns". (R-149) Such conclusion is wholly assumptuous.

The Circuit Court of Appeals in its opinion gets down to the proposition that Noro and Goto made no explanation to the officers when "shown the recomputations of their taxes", nor did they offer any explanation at the trial (R-149). As to their failure to testify at the trial, it is still the law that no presumption may arise from such failure to testify on the part of any defendant, Japanese or otherwise. The evidence for the government must still be legally sufficient to sustain the verdict, even though the defendants do not testify. As to the recomputations of taxes shown the petitioners, it is not pointed out what the "recomputations" were, or upon what basis they were compiled, or whether they were correct or not. Furthermore, at that time, as Japanese nationals immediately after Pearl Harbor, they were being told what to do and not asked what to do. They were not talking to anybody, certainly not talking back to government agents. Their state of mind was in such condition that the trial Judge in this case refused to admit in evidence lengthy statements extracted from petitioners by the government officers (R-55 et seq.). Last but not least, failure of petitioners to explain when they were shown "recomputations" cannot be the equivalent to affirmative proof of the allegations of the indictment, nor supply the fatal defect of not establishing the individual annual earnings of Noro for the years in question.

The Circuit Court of Appeals finally, in the last sentence of its opinion (R-150) inferentially indicates its real reason for affirming the conviction, both on the issue of proof and the legality of the search, by mentioning "the moderate sentences" imposed upon petitioners. (R-150).

It is respectfully submitted that the Writ of Certi-

orari should issue and that the judgment appealed from should be reversed.

CONCLUSION

Petitioners respectfully submit that:

(a) The search of the Nikko Inn on December 8, 1941, and the seizure of the books of record therein, violated petitioners' rights under the Fourth Amendment to the Constitution of the United States.

(b) The introduction in evidence of such books and records so seized as aforesaid, violated petitioners' rights under the Fifth Amendment to the Constitution of the United States.

(c) There was a fatal defect in the government's proof at the trial in that it was not established what Noro's personal income actually was during the years named in the indictment.

(d) Even if it be assumed that Noro's personal income tax returns were made up from the English books, there is no showing that he participated in the making up of either the Japanese or the English books or that he even knew of the existence of the Japanese books, it being established that both sets of books were kept by a person other than these petitioners.

(e) The Judgment of the Circuit Court of Appeals affirming the Judgment of the District Court should be reversed.

(f) The points involved in this case are fundamental and are such as to call for the exercise of this Court's power of supervision.

(g) The Writ of Certiorari should accordingly be granted.

It is therefore prayed that the Writ of Certiorari be issued and that the Judgment and Decree of the Circuit Court of Appeals be reversed and the cause remanded.

Respectfully submitted,

WM. C. PIERCE,
214 Madison St., Tampa, Fla.
Attorney for Petitioners.

EXHIBIT A

Constitutional Provisions, Statutes, Executive Orders, etc., Involved.

INDEX TO APPENDIX

CONSTITUTION AND STATUTES

MISCELLANEOUS

STATUTES

REVENUE ACT OF 1936, c. 690, 49 STAT. 1648

SEC. 145. PENALTIES.

* * * * *

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisonment for not more than five years, or both, together with the costs of prosecution.

* * * * *

Section 145 (b) of the Revenue Act of 1938, c. 289, 52 Stat. 447, and of the Internal Revenue Code (26 U. S. C. 1940 ed., Sec. 145) is identical.

CRIMINAL CODE

SECTION 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisonment not more than two years, or both. (18 U. S. C. 1940 ed., Sec. 88.)

SECTION 332. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal. (18 U. S. C. 1940 ed., Sec. 550.)

ARTICLE I

SECTION 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; * * *

* * * * *

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

* * * * *

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

* * * * *

ARTICLE II

SECTION 1. The executive Power shall be vested in a President of the United States of America. * * *

* * * * *

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; * * *

* * * * *

SECTION 3. * * he shall take Care that the Laws be faithfully executed, * * *.

FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Judy, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

TRADING WITH THE ENEMY ACT, C. 106, 40 STAT. 411 ACT OF OCTOBER 6, 1917.

SEC. 5 [As amended by Sec. 2 of the Act of March 9, 1933, c. 1, 48 Stat. 1] * * *

(b) During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by meanes of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by banking institutions as defined by the Presi-

dent, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person engaged in any transaction referred to in this subdivision to furnish under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed. * * * (50 U. S. C. 1940 ed., App. Sec. 5; 12 U. S. C. 1940 ed., Sec. 95a.)

JOINT RESOLUTION OF MAY 7, 1940, c. 185, 54 STAT. 179

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. 411), as amended, is hereby amended to read as follows:

> During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by or to banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, and any transfer, withdrawal or exportation of, or dealing in, any evidences of indebtedness or evidences of ownership of property in which any foreign state or a national or political subdivision thereof, as defined by the President, has any interest, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person to furnish under oath, com-

plete information relative to any transaction referred to in this subdivision or to any property in which any such foreign state, national or political subdivision has any interest, including the production of any books of accounts, contracts, letters, or other papers, in connection therewith in custody or control of such person, either before or after such transaction is completed.

(50 U. S. C. 1940 ed., App. Sec. 5; 12 U. S. C. 1940 ed., Sec. 95a.)

SEC. 2. Executive Order Numbered 8389 of April 10, 1940, and the regulations and general rulings issued thereunder by the Secretary of the Treasury are hereby approved and confirmed. (12 U. S. C. 1940 ed., Sec. 95 Note.)

EXECUTIVE ORDER NO. 8389, 5 FED. REG. 1400

By virtue of the authority vested in me by section 5 (b) of the Act of October 6, 1917 (40 Stat. 411), as amended by section 2 of the Act of March 9, 1933 (48 Stat. 1), and by virtue of all other authority vested in me, I, Franklin D. Roosevelt, President of the United States of America, do hereby amend Executive Order No. 6560, dated January 15, 1934, regulating transactions in foreign exchange, transfers of credit, and the export of coin and currency by adding the following sections after section 8 thereof:

SECTION 8. Notwithstanding any of the provisions of sections 1 to 8, inclusive, of this Order, all of the following are prohibited, except as specifically authorized in regulations or licenses issued by the Secretary of the Treasury pursuant to this Order, if involving property in which Norway or Denmark or any national thereof has at any time

on or since April 8, 1940, had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside of the United States, of a banking institution within the United States);

B. All payments by any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States; and

E. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

SECTION 10. *Additional reports.*—A. Reports under oath shall be filed, on such forms, at such time or times and from time to time, and by such persons, as provided in regulations prescribed by the Secretary of the Treasury, with respect to all property of any nature whatsoever of which Norway or Denmark or any national thereof is or was the owner, or in which Norway or Denmark or any national thereof has or had an interest of any nature whatsoever, direct or indirect, and with respect to any acquisition, transfer, disposition, or any other dealing in such property.

B. The Secretary of the Treasury may require the furnishing under oath of additional and supplemental information, including the production of any books of account, contracts, letters or other papers with respect to the matters con-

cerning which reports are required to be filed under this Section.

SECTION 11. *Additional definitions.*—In addition to the definitions contained in Section 7, the following definitions are prescribed:

A. The terms "Norway" and "Denmark", respectively, mean the State and the Government of Norway and Denmark on April 8, 1940, and any political subdivisions, agencies and instrumentalities thereof, including territories, dependencies and possessions, and all persons acting or purporting to act directly or indirectly for the benefit or on behalf of the foregoing. The terms "Norway" and "Denmark", respectively, shall also include any and all other governments (including political subdivisions, agencies, and instrumentalities thereof and persons acting or purporting to act directly or indirectly for the benefit or on behalf thereof) to the extent and only to the extent that such governments exercise or claim to exercise de jure or de facto sovereignty over the area which, on April 8, 1940, constituted Norway or Denmark.

B. The term "national" of Norway or Denmark shall include any person who has been or whom there is reasonable cause to believe has been domiciled in, or a subject, citizen or resident of Norway or Denmark at any time since April 8, 1940, but shall not include any individual domiciled and residing in the United States on April 8, 1940, and shall also include any partnership, association, or other organization, including any corporation organized under the laws of, or which on April 8, 1940, had its principal place of business in Norway or Denmark or which on or after such date has been controlled by, or a substantial part of the stock, shares, bonds, debentures, or other securities of which has been owned or controlled by, directly or indirectly, one or more persons, who have been, or whom there is reasonable cause to believe have been, domiciled in, or the subjects, citizens or residents of Norway or Denmark at any time on or since April 8,

1940, and all persons acting or purporting to act directly or indirectly for the benefit or on behalf of the foregoing.

C. The term "banking institution" as used in section 9 includes any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or brokers; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate "banking institution".

SECTION 12. *Additional regulations.* — The Regulations of November 12, 1934, are hereby modified insofar as they are inconsistent with the provisions of sections 9 to 11, inclusive, of this Order, and except as so modified are hereby continued in full force and effect. The Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations to carry out the purposes of sections 9 to 11, inclusive, of this Order as amended, and to provide in such regulations or by rulings made pursuant thereto, the conditions under which licenses may be granted by such agencies as the Secretary of the Treasury may designate.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
April 10, 1940.

EXECUTIVE ORDER NO. 8785, 6 FED. REG. 2897.

By virtue of and pursuant to the authority vested in me by Section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, by virtue of all other authority vested in me, and by virtue of the existence of a period of unlimited national emergency, and finding that this Order is in the public interest and is necessary in the

interest of national defense and security, I, Franklin D. Roosevelt, President of the United States of America, do prescribe the following:

Executive Order No. 8389 of April 10, 1940, as amended, is amended to read as follows:

SECTION 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States:

D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

E. All transfers, withdrawals or exportations of,

or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

SECTION 2. A. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

(1) The acquisition, disposition or transfer of, or other dealing in, or with respect to, any security or evidence thereof on which there is stamped or imprinted, or to which there is affixed or otherwise attached, a tax stamp or other stamp of a foreign country designated in this Order or a notarial or similar seal which by its contents indicates that it was stamped, imprinted, affixed or attached within such foreign country, or where the attendant circumstances disclose or indicate that such stamp or seal may, at any time, have been stamped, imprinted, affixed or attached thereto; and

(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United States.

B. The Secretary of the Treasury may investigate, regulate, or prohibit under such regulations, rulings, or instructions as he may prescribe, by means of licenses or otherwise, the sending, mailing, importing or otherwise bringing, directly or indirectly, into the United States, from any foreign country, of any securities or evidences thereof or the receiving or holding in the

United States of any securities or evidences thereof so brought into the United States.

SECTION 3. The term "foreign country designated in this Order" means a foreign country included in the following schedule, and the term "effective date of this Order" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

(a) April 8, 1940—
Norway and
Denmark;

(b) May 10, 1940—
The Netherlands,
Belgium and
Luxembourg;

(c) June 17, 1940—
France (including Monaco);

(d) July 10, 1940—
Latvia,
Estonia and
Lithuania;

(e) October 9, 1940—
Rumania;

(f) March 4, 1941—
Bulgaria;

(g) March 13, 1941—
Hungary;

(h) March 24, 1941—
Yugoslavia;

(i) April 28, 1941—
Greece; and

(j) June 14, 1941—
Albania,
Andorra,
Austria,
Czechoslovakia,
Danzig,
Finland,
Germany,
Italy,
Liechtenstein,
Poland,
Portugal,
San Marino,
Spain,
Sweden,
Switzerland, and
Union of Soviet Socialist Republics.

The "effective date of this Order" with respect to any foreign country not designated in this Order shall be deemed to be June 14, 1941.

SECTION 4. A. The Secretary of the Treasury and/or the Attorney General may require, by means of regulations, rulings, instructions, or otherwise, any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, from time to time and at any time or times, complete information relative to, any transaction referred to in section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect, including the production of any books of account, contracts, letters, or other papers, in connection therewith, in the custody or control of such person, either before or after such transaction is completed; and the Secretary of the Treasury and/or the Attorney General may, through any agency, investigate any such transaction or act, or any violation of the provisions of this Order.

B. Every person engaging in any of the transactions referred to in sections 1 and 2 of this Order shall keep a full record of each such transaction engaged in by him, regardless of whether such transaction is affected pursuant to license or otherwise, and such record shall be available for examination for at least one year after the date of such transaction.

SECTION 5. A. As used in the first pragraph of section 1 of this Order "transactions [which] involve property in which any foreign country designated in this Order, or any national thereof, has * * * any interest of any nature whatsoever, direct or indirect," shall include, but not by way of limitation (i) any payment or transfer to any such foreign country or national thereof, (ii) any export or withdrawal from the United States to such foreign country, and (iii) any transfer of credit, or payment of an obligation, expressed in terms of the currency of such foreign country.

B. The term "United States" means the United States and any place subject to the jurisdiction thereof; the term "continental United States" means the states of the United States, the District of Columbia, and the Territory of Alaska.

C. The term "person" means an individual, partnership, association, corporation, or other organization.

D. The term "foreign country" shall include, but not by way of limitation,

(i) The state and the government thereof on the effective date of this Order as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof,

(ii) Any other government (including any political subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise *de jure* or *de facto* sovereignty over the area which on such effective date constituted such foreign country, and

(iii) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing.

E. The term "national" shall include,

(i) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order,

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals thereof as herein defined,

(iii) Any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any national of such foreign country, and

(iv) Any other person who there is reasonable cause to believe is a "national" as herein defined.

In any case in which by virtue of the foregoing definition a person is a national of more than one foreign country, such person shall be deemed to be a national of each such foreign country. In any case in which the combined interests of two or more foreign countries designated in this Order and/or nationals thereof are sufficient in the aggregate to constitute, within the meaning of the foregoing, control or 25 per centum or more of the stock, shares, bonds, debentures, notes drafts, or other securities or obligations of a partnership, association, corporation or other organization, but such control or a substantial part of such stock, shares, bonds, debentures, notes, drafts, or other securities or obligations is not held by any one such foreign country and/or national thereof, such partnership, association, corporation or other organization shall be deemed to be a national of each of such foreign countries. The Secretary of the Treasury shall have full power to determine that any person is or shall be deemed to be a "national" within the meaning of this definition, and the foreign country of which such person is or shall be deemed to be a national. Without limitation of the foregoing, the term "national" shall also include any other person who is determined by the Secretary of the Treasury to be, or to have been, since such effective date, acting or purporting to act directly or indirectly for the benefit or under the direction of a foreign country designated in this Order or national thereof, as herein defined.

F. The term "banking institution" as used in this Order shall include any person engaged primarily or incidentally in the business of banking, of granting or

transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as pincipal or agent, or any person holding credits for others as a direct or incidental part of his business, branch or correspondent of any person so engaged shall or broker, and each principal, agent, home office, be regarded as a separate "banking institution."

G. The term "this Order", as used herein, shall mean Executive Order No. 8389 of April 10, 1940, as amended.

SECTION 6. Executive Order No. 8389 of April 10, 1940, as amended, shall no longer be deemed to be an amendment to or a part of Executive Order No. 6560 of January 15, 1934. Executive Order No. 6560 of January 15, 1934, and the Regulations of November 12, 1934, are hereby modified in so far as they are inconsistent with the provisions of this Order, and except as so modified, continue in full force and effect. Nothing herein shall be deemed to revoke any license, ruling, or instruction now in effect and issued pursuant to Executive Order No. 6560 of January 15, 1934, as amended, or pursuant to this Order; provided, however, that all such licenses, rulings, or instructions shall be subject to the provisions hereof. Any amendment, modification or revocation by or pursuant to the provisions of this Order of any orders, regulations, rulings, instructions or licenses shall not affect any act done, or any suit or proceeding had or commenced in any civil or criminal case prior to such amendment, modification or revocation, and all penalties, forfeitures and liabilities under any such orders, regulations, rulings, instructions or licenses shall continue and may be enforced as if such amendment, modification or revocation had not been made.

SECTION 7. Without limitation as to any other powers or authority of the Secretary of the Treasury or the Attorney General under any other provision of this Order, the Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations, rulings, and instructions to carry out the purposes of this Order and to provide therein or otherwise the conditions under which licenses may be granted by or through such officers or agencies as the Secretary of the Treasury may designate, and the decision of the Secretary with respect to the granting, denial or other disposition of an application or license shall be final.

SECTION 8. Section 5 (b) of the Act of October 6, 1917, as amended, provides in part:

> * * * Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

SECTION 9. This Order and any regulations, rulings, licenses or instructions issued hereunder may be amended, modified or revoked at any time.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
June 14, 1941.

EXECUTIVE ORDER NO. 8832, 6 FED. REG. 3715

Amendment of Executive Order No. 8389 of April 10, 1940, as amended:

By virtue of the authority vested in me by

section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, and by virtue of all other authority vested in me, I, Franklin D. Roosevelt, President of the United States of America, do hereby amend Executive Order No. 8389 of April 10, 1940, as amended, by changing the period at the end of subdivision (j) of Section 3 of such Order to a semicolon and adding the following new subdivision thereafter:

(k) June 14, 1941—
China, and
Japan,

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
July 26, 1941.

GENERAL LICENSE NO. 68, 6 FED. REG. 3726

GENERAL LICENSE NO. 68 UNDER EXECUTIVE ORDER NO. 8389, APRIL 10, 1940, AS AMENDED, AND REGULATIONS ISSUED PURSUANT THERETO, RELATING TO TRANSACTIONS IN FOREIGN EXCHANGE, ETC.[1]

JULY 26, 1941.

§131.68 *General License No. 68.*—(a) A general license is hereby granted licensing as generally licensed nationals, individuals who are nationals of China and Japan and who have been residing only in the United States at all times on and since June 17, 1940; *Provided however,* That this license shall not be deemed to license as a generally licensed national any individual who is a national of China or Japan by reason of any fact other than that such individual has been a subject or citizen of China or Japan at any time on or since such date.

[1]Sec. 5 (b), 40 Stat. 415 and 966; Sec. 2, 48 Stat. 1; 54 Stat. 179; E. O. 8389, April 10, 1940, as amended by E. O. 8785, June 14, 1941, and E. O. 8832, July 26, 1941; Regulations, April 10, 1940, as amended June 14, 1941, and July 26, 1941.

(b) Reports on Form TFR-300 are not required to be filed with respect to the property interests of any individuals licensed herein as generally licensed nationals.

[SEAL] E. H. FOLEY, JR.,
Acting Secretary of the Treasury.

PUBLIC CIRCULAR NO. 8, 6 FED. REG. 6304

REVOCATION OF LICENSES, ETC., RELATING TO JAPAN

Public Circular No. 8 Under Executive Order No. 8389, April 10, 1940, as Amended and Regulations Issued Pursuant Thereto, Relating to Transactions in Foreign Exchange, Etc.

DECEMBER 7, 1941.

All general licenses, specific licenses, and authorizations of whatsoever character are hereby revoked in so far as they authorize, directly or indirectly, any transaction by, on behalf of, or for the benefit of, Japan, or any national thereof.

[SEAL] H. MORGENTHAU, JR.,
Secretary of the Treasury.

DECLARATION OF WAR BETWEEN UNITED STATES AND JAPAN, C. 561, 55 STAT. 795

JOINT RESOLUTION

Declaring that a state of war exists between the Imperial Government of Japan and the Government and the people of the United States and making provisions to prosecute the same

Whereas the Imperial Government of Japan has committed unprovoked acts of war against the Government

and the People of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial Government of Japan; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

Approved, December 8, 1941, 4:10 p. m., E. S. T.

FIRST WAR POWERS ACT, 1941, C. 593, 55 STAT. 839; ACT OF DECEMBER 18, 1941.

SEC. 301. The first sentence of subdivision (b) of section 5 of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, is hereby amended to read as follows:

> (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—
>
> (A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof, including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. (50 U. S. C. 1940 ed., Supp. III, App. Sec. 5; 12 U. S. C. 1940 ed., Supp. III, Sec. 95a.)

SEC. 302. All acts, actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made, or issued by, or pursuant to the direction of, the President or the Secretary of the Treasury under the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, which would have been authorized if the provisions of this Act and the amendments made by it had been in effect, are hereby approved, ratified, and

confirmed. (50 U. S. C. 1940 ed., Supp. III, App. Sec. 617.)

REVISED STATUTES (THE FOLLOWING SECTIONS OF WHICH ARE COMMONLY CALLED THE ALIEN ENEMY ACT)

SEC. 4067 [as amended by the Act of April 16, 1918, c. 55, 40 Stat. 531]. Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety. (50 U. S. C. 1940 ed., Sec. 21.)

SEC. 4068. When an alien who becomes liable as an enemy, in the manner prescribed in the preceding section, is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or

shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality. (50 U. S. C. 1940 ed., Sec. 22.)

SEC. 4069. After any such proclamation has been made, the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized, and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appearing, to order such alien to be removed out of the territory of the United States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison, or otherwise secure such alien, until the order which may be so made shall be performed. (50 U. S. C. 1940 ed., Sec. 23.)

PROCLAMATION NO. 2525, 6 FED. REG. 6321 [EXPRESSLY PROMULGATED ON DECEMBER 7, 1941, UNDER AUTHORITY OF THE ALIEN ENEMY ACT]

* * * * *

Now, therefore, I, Franklin D. Roosevelt, as President of the United States, and as Commander in Chief of the Army and Navy of the United States, do hereby

make public proclamation to all whom it may concern that an invasion has been perpetrated upon the territory of the United States by the Empire of Japan.

Conduct To Be Observed by Alien Enemies

And, acting under and by virtue of the authority vested in me by the Constitution of the United States and the said sections of the United States Code, I do hereby further proclaim and direct that the conduct to be observed on the part of the United States toward all natives, citizens, denizens or subjects of the Empire of Japan being of the age of fourteen years and upwards who shall be within the United States or within any territories in any way subject to the jurisdiction of the United States and not actually naturalized, who for the purpose of this Proclamation and under such sections of the United States Code are termed alien enemies, shall be as follows:

All alien enemies are enjoined to preserve the peace towards the United States and to refrain from crime against the public safety, and from violating the laws of the United States and of the States and Territories thereof; and to refrain from actual hostility or giving information, aid or comfort to the enemies of the United States or interfering by word or deed with the defense of the United States or the political processes and public opinions thereof; and to comply strictly with the regulations which are hereby or which may be from time to time promulgated by the President.

All alien enemies shall be liable to restraint, or to give security, or to remove and depart from the United States in the manner prescribed by Sections 23 and 24 of Title 50 of the United States Code, and as prescribed in the regulations duly promulgated by the President.

Duties and Authority of the Attorney General and the Secretary of War

And, pursuant to the authority vested in me, I hereby charge the Attorney General with the duty of executing all the regulations hereinafter contained regarding the conduct of alien enemies within continental United States, Puerto Rico, the Virgin Islands and Alaska, and the Secretary of War with the duty of executing the regulations which are hereinafter set forth and which may be hereafter adopted regarding the conduct of alien enemies in the Canal Zone, the Hawaiian Islands and the Philippine Islands. Each of them is specifically directed to cause the apprehension of such alien enemies as in the judgment of each are subject to apprehension or deportation under such regulations. In carrying out such regulations within the continental United States, Puerto Rico, the Virgin Islands and Alaska, the Attorney General is authorized to utilize such agents, agencies, officers and departments of the United States and of the several states, territories, dependencies and municipalities thereof and of the District of Columbia as he may select for the purpose. Similarly the Secretary of War in carrying out such regulations in the Canal Zone, the Hawaiian Islands and the Philippine Islands is authorized to use such agents, agencies, officers and departments of the United States and of the territories, dependencies and municipalities thereof as he may select for the purpose. All such agents, agencies, officers and departments are hereby granted full authority for all acts done by them in the execution of such regulations when acting by direction of the Attorney General or the Secretary of War, as the case may be.

Regulations

And, pursuant to the authority vested in me, I here-

by declare and establish the following regulations which I find necessary in the premises and for the public safety:

* * * * *

(5) No alien enemy shall have in his possession, custody or control at any time or place or use or operate any of the following enumerated articles:

a. Firearms.
b. Weapons or implements of war or component parts thereof.
c. Ammunition.
d. Bombs.
e. Explosives or material used in the manufacture of explosives.
f. Short-wave radio receiving sets.
g. Transmitting sets.
h. Signal devices.
i. Codes or ciphers.
j. Cameras.
k. Papers, documents or books in which there may be invisible writing; photograph, sketch, picture, drawing, map or graphical representation of any military or naval installations or equipment or of any arms, ammunition, implements of war, device or thing used or intended to be used in the combat equipment of the land or naval forces of the United States or of any military or naval post, camp or station.

All such property found in the possession of any alien enemy in violation of the foregoing regulations shall be subject to seizure and forfeiture.

(6) No alien enemy shall undertake any air flight or ascend into the air in any airplane, aircraft or balloon of any sort whether owned governmentally, commercially or privately, except that travel by an alien enemy in an airplane or aircraft may be authorized by the Attorney General, or his representative, or the Secretary

of War, or his representative, in their respective jurisdictions, under such regulations as they shall prescribe.

(7) Alien enemies deemed dangerous to the public peace or safety of the United States by the Attorney General or the Secretary of War, as the case may be, are subject to summary apprehension. Such apprehension shall be made in the continental United States, Alaska, Puerto Rico and the Virgin Islands by such duly authorized officer of the Department of Justice as the Attorney General may determine. In the Canal Zone, the Hawaiian Islands and the Philippine Islands, such arrests shall be made by the Military Commanders in each such territory by authority of the respective Military Governors thereof, and if there be no Military Governor, then by authority of the Secretary of War. Alien enemies arrested shall be subject to confinement in such place of detention as may be directed by the officers responsible for the execution of these regulations and for the arrest, detention and internment of alien enemies in each case, or in such other places of detention as may be directed from time to time by the Attorney General, with respect to continental United States, * * * and there confined until he shall have received such permit as the Attorney General shall prescribe.

(8) No alien enemy shall land in, enter or leave or attempt to land in, enter or leave the United States, except under the regulations prescribed by the President in his Proclamation dated November 14, 1941, and the regulations promulgated thereunder or any proclamation or regulation promulgated hereafter.

(9) Whenever the Attorney General of the United States, with respect to the continental United States, Alaska, Puerto Rico and the Virgin Islands, or the Secretary of War, with respect to the Canal Zone, the

Hawaiian Islands, and the Philippine Islands, deems it to be necessary, for the public safety and protection, to exclude alien enemies from a designated area, surrounding any fort, camp, arsenal, airport, landing field, aircraft station, electric or other power plant, hydroelectric dam, government naval vessel, navy yard, pier, dock, dry dock, or any factory, foundry, plant, workshop, storage yard, or warehouse for the manufacture of munitions or implements of war or anything of any kind, nature or description for the use of the Army, the Navy or any country allied or associated with the United States, or in anywise connected with the national defense of the United States, or from any locality in which residence by an alien enemy shall be found to constitute a danger to the public peace and safety of the United States or from a designated area surrounding any canal or any wharf, pier, dock or dry dock used by ships or vessels of any designated tonnage engaged in foreign or domestic trade, or of any warehouse, shed, elevator, railroad terminal, depot or yard or other terminal, storage or transfer facility, then no alien enemy shall be found within such area or the immediate vicinity thereof. Any alien enemy found within any such area or the immediate vicinity thereof prescribed by the Attorney General or the Secretary of War, as the case may be, pursuant to these regulations, shall be subject to summary apprehension and to be dealt with as hereinabove prescribed.

(10) With respect to the continental United States, Alaska, Puerto Rico, and the Virgin Islands, an alien enemy shall not change his place of abode or occupation or otherwise travel or move from place to place without full compliance with any such regulations as the Attorney General of the United States may, from time to time, make and declare; and the Attorney Gen-

eral is hereby authorized to make and declare, from time to time, such regulations concerning the movements of alien enemies within the continental United States, Alaska, Puerto Rico and the Virgin Islands, as he may deem necessary in the premises and for the public safety.

* * * * *

(12) No alien enemy shall enter or be found in or upon any highway, waterway, airway, railway, railroad, subway, public utility, building, place or thing not open and accessible to the public generally, and not generally used by the public.

(13) No alien enemy shall be a member or an officer of, or affiliated with, any organization, group or assembly hereafter designated by the Attorney General, nor shall any alien enemy advocate, defend or subscribe to the acts, principles or policies thereof, attend any meeetings, conventions or gatherings thereof or possess or distribute any literature, propaganda or other writings or productions thereof.

This proclamation and the regulations herein contained shall extend and apply to all land and water, continental or insular, in any way within the jurisdiction of the United States.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this 7th day of December, in the year of our Lord nineteen hundred and forty-one, and of the Independence of the United States of America the one hundred and sixty-sixth.

[SEAL] FRANKLIN D. ROOSEVELT